

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joy Almeyda	Team: Team # 1	CCRB Case #: 201104826	<input type="checkbox"/> Force <input checked="" type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input type="checkbox"/> Injury
Incident Date(s) Fri, 04/29/2011 7:00 AM	Location of Incident: Van Duzer Street and Sands Street	Precinct: 120	S.O.L. Expires: 10/29/2012
Date/Time CV Reported Fri, 04/29/2011 7:37 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 04/29/2011 7:37 AM

Complainant/Victim	Type	Home Address
1. D ■■■ B ■■■	Comp/Victim	■■■■■

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Hebert	24213	943363	120 PCT
2. POM M ■■■ P ■■■	00683	■■■■■	■■■■■

Officer(s)	Allegation	Investigator Recommendation
A . POM Christophe Hebert	Abuse of Authority: PO Christopher Hebert stopped D ■■■ B ■■■	A . Exonerated
B . POM Christophe Hebert	Abuse of Authority: PO Christopher Hebert frisked D ■■■ B ■■■	B . Unsubstantiated
C . POM Christophe Hebert	Abuse of Authority: PO Christopher Hebert searched D ■■■ B ■■■	C . Unsubstantiated
D . POM Christophe Hebert	Abuse of Authority: PO Christopher Hebert searched D ■■■ B ■■■ backpack.	D . Unsubstantiated
E . POM Christophe Hebert	Discourtesy: PO Christopher Hebert spoke rudely to D ■■■ B ■■■	E . Unsubstantiated
F . POM Christophe Hebert	Other: PO Christopher Hebert failed to prepare a memo book entry as required.	F . Other Misconduct
G . POM M ■■■ P ■■■	Other: PO M ■■■ P ■■■ failed to prepare a memo book entry as required.	G . Other Misconduct

Case Summary

On April 29, 2011, Mr. D [REDACTED] B [REDACTED] called the CCRB to file the following complaint.

At approximately 7:00 a.m. on April 29, 2011, Mr. B [REDACTED] was walking on Sands Street at Van Duzer Street in Staten Island, when he was approached by PO Christopher Hebert and PO M [REDACTED] P [REDACTED] both of the 120 Precinct, resulting in the following allegations.

Allegation A – Abuse of Authority: PO Christopher Hebert stopped D [REDACTED] B [REDACTED]

The investigation determined that PO Hebert had reasonable suspicion to stop Mr. B [REDACTED] it is therefore recommended that **Allegation A** be **exonerated**.

Allegation B – Abuse of Authority: PO Christopher Hebert frisked D [REDACTED] B [REDACTED]

Allegation C – Abuse of Authority: PO Christopher Hebert searched D [REDACTED] B [REDACTED]

Allegation D – Abuse of Authority: PO Christopher Hebert searched D [REDACTED] B [REDACTED] backpack.

Allegation E – Discourtesy: PO Christopher Hebert spoke rudely and obscenely to D [REDACTED] B [REDACTED]

The investigation was unable to obtain any evidence or independent witnesses to confirm or refute the above allegations and to determine the propriety of the officers' actions. It is therefore recommended that **Allegations B, C, D, and E** be closed at **unsubstantiated**.

Allegation F – Other Misconduct: PO Christopher Hebert failed to prepare a memo book entry as required.

Allegation G – Other Misconduct: PO M [REDACTED] P [REDACTED] failed to prepare a memo book entry as required.

Since PO Hebert and PO P [REDACTED] did not prepare memo book entries regarding this incident as required by P.G. 212-08, it is recommended that PO P [REDACTED] and PO Hebert be cited for **other misconduct**.

On May 6, 2011, Mr. B [REDACTED] was offered the opportunity to mediate his complaint; however, he declined.

Results of Investigation

Civilian Statements

Complainant/Victim: D [REDACTED] B [REDACTED]

- *Mr. B [REDACTED] is a [REDACTED] standing six feet, two inches tall, with black hair and brown eyes.*

CCRB Testimony:

Along with his original intake statement (*encl. 8a – 8b*), Mr. D [REDACTED] B [REDACTED] provided a phone statement to the CCRB on May 6, 2011 (*encl. 9a*) and was interviewed in-person at the CCRB on May 19, 2011 (*encl. 9b – 9d*). Inconsistencies in these statements are noted.

At approximately 7:00 a.m. on April 29, 2011, Mr. B [REDACTED] was walking south on Bay Street in Staten Island coming from the Staten Island Ferry. He had a court date at 9:00 a.m. and needed to store his bag. He was wearing a black hooded sweatshirt with w [REDACTED] thermal lining on the inside,

a w■■■■ t-shirt, jeans, and a black North Face backpack. In his right sweatshirt pocket, he had napkins, receipts, and a MetroCard. In his left sweatshirt pocket, he had his tobacco pipe, a lighter, and three cigarette butts. In his right back pants pocket, he had only his wallet. Mr. B■■■■ stated that the wallet created a bulge in the pocket, but believed the bulge was in the shape of a wallet. In his right front pants pocket, he had ten dollars and in his left front pants pocket, he had tissue. His left back pocket was empty. Mr. B■■■■ backpack contained reading materials, a change of clothes, writing utensils, and paperwork in the larger pocket and the front pocket contained tissue, soap, lotion, a phone charger, and an mp3 player. The bag was somewhat full but nothing was bulging from it. Mr. B■■■■ turned west onto Sands Street and walked towards Van Duzer Street. He stopped for a minute because he was tired and disoriented, then crossed the street. There were brick-faced houses on one side of the street and townhouses on the other side. En route, Mr. B■■■■ did not make any stops and did not interact with anyone.

An unmarked silver Chevrolet Malibu or Dodge Intrepid, containing two officers in plainclothes, identified by the investigation as PO Christopher Hebert, who was driving, and PO M■■■■ P■■■■ both of the 120th Precinct, pulled up next to Mr. B■■■■ who was in the side path of the street, right past the island (separating Wave Street and Sands Street; see map encl.7a), in a driveway. Mr. B■■■■ described PO Hebert as a w■■■■ male between twenty and thirty-five-years-old, standing five feet, five inches to five feet, seven inches tall, weighing one-hundred-seventy pounds, with graying hair. He was dressed in a gray Abercrombie & Fitch shirt, dark blue jeans, and a black fleece jacket. Mr. B■■■■ also described PO P■■■■ as a w■■■■ male between thirty-five and forty-years-old, standing five feet, five inches tall, weighing between one-hundred-fifty and one-hundred-sixty pounds, with graying blond hair. He was dressed in a light gray shirt, light blue jeans, and a light blue Abercrombie & Fitch hooded sweatshirt. In his original complaint, Mr. B■■■■ provided shield numbers 21231 and 54123 for the officers, but noted that the officers did not show him their shields. In his in-person statement, Mr. B■■■■ noted that PO P■■■■ provided his shield number verbally and PO Hebert only showed him his shield and pointed towards his shield number.

PO Hebert asked Mr. B■■■■ “What are you doing?” and said to, “Stop there.” Both officers exited the vehicle and approached Mr. B■■■■ PO Hebert asked him for his identification and reached for the wallet in Mr. B■■■■ back pocket. Mr. B■■■■ brushed the officer’s hand away and asked, “What do you need my ID for? What am I being stopped for?” PO Hebert said, “Either you can give me your ID or you can get arrested.” Mr. B■■■■ handed the officer his identification and again asked why he was being stopped. PO Hebert informed him that there were reports of break-ins in the area and he fit the description of the perpetrator. The officers did not tell Mr. B■■■■ the description. Mr. B■■■■ asked whether they stopped him because he was a black male and neither officer responded. Mr. Books noticed that the officer’s radio was silent and told the officer that they were profiling him.

At that point, PO Hebert received a radio communication asking him what he was doing and he reported that he had someone stopped and he was “running” him. Then PO Hebert’s cell phone rang and he told the caller that he was talking to a perpetrator and he wanted to clear it up before he left to investigate a case regarding a stolen car. PO Hebert took Mr. B■■■■ identification back to the patrol car to run a warrant check. When PO Hebert returned, he frisked Mr. B■■■■ right sweatshirt pocket and then entered it, frisked his left sweatshirt pocket, and entered it as well, removing the tobacco pipe and examining it. He then entered Mr. B■■■■ left front pants pocket and removed the tissues. He also removed Mr. B■■■■ wallet from his back pants pocket,

examined it and rearranged the cards in it. He then placed the wallet in Mr. B ██████ sweatshirt pocket.

At the beginning of the search, Mr. B ██████ asked why he was being searched. PO P ██████ said, "If you're not going to be quiet, we're going to cuff you." Mr. B ██████ then informed the officers that he had done nothing wrong and that if they were going to search and detain him, he wanted to know what he was being stopped for. PO P ██████ replied, "It's for our own safety to detain you," and handcuffed Mr. B ██████

As PO Hebert was frisking and searching Mr. B ██████ he asked Mr. B ██████ why he was being stopped and asked why he was out so early in the morning. Mr. B ██████ replied that he was homeless and had two children in ACS custody. PO Hebert then called Mr. B ██████ a "degenerate" (in his phone statement, Mr. B ██████ alleged that it was PO P ██████ who called him the name) and said, "That's why you're going through these problems. If you were a real man, you would be at home right now." Mr. B ██████ replied, "You're no better than me. You're stopping people and harassing them when there are real crimes being committed at this point. I know my rights." PO P ██████ then told Mr. B ██████ "If you know your rights, then you would not have stopped over there." PO Hebert continued to "demean" Mr. B ██████ who argued back and forth with the officer. During this conversation, Mr. B ██████ spoke in what he considered to be a normal tone of voice with sarcastic undertones. Mr. B ██████ said, "You don't understand people's circumstances, there's always reasons behind stuff." PO Hebert replied, "Well, you're drunk this early in the morning." Mr. B ██████ asserted that he was not drunk and informed the officer that he had been drinking at 2:00 a.m. and did not brush his teeth.

After PO Hebert searched Mr. B ██████ person, PO P ██████ entered Mr. B ██████ backpack. In his phone statement on May 6, 2011, Mr. B ██████ alleged that PO Hebert searched both pockets of his backpack. Mr. B ██████ did not allege that his backpack was searched at all during his initial complaint.

PO Hebert told Mr. B ██████ "You need to be quiet. You're disrupting people in their houses when they're trying to sleep." Mr. B ██████ told the officers that he was not breaking any laws or sound ordinances. Meanwhile, an elderly black male parked his burgundy Dodge Caravan nearby and stood on the stairs of a house, watching the incident occur for one minute before entering his home, two houses away from where Mr. B ██████ was standing. The house had w ██████ vinyl siding with burgundy paint and had a six-foot black gate in front of it. PO Hebert said, "Well that's why that guy is staring at you," referring to Mr. B ██████ disturbing the residents. One of the officers informed Mr. B ██████ that he was going to take him in. Mr. B ██████ informed the officers that he had to go to the court house on Richmond Terrace for a court case, as he was currently out on bail. PO Hebert said that Mr. B ██████ was not going to make it to his court date. PO P ██████ said to PO Hebert, "Do you think he has anything?" to which PO Hebert replied, "I don't think he's that stupid. If he keeps talking like this, he shouldn't have anything." PO Hebert entered the patrol car and issued Mr. B ██████ summons 433112733-3 for disorderly conduct, subsection 2 (making unreasonable noise), shoved the summons into Mr. B ██████ wallet and released him from handcuffs. Mr. B ██████ admitted that he used some "obscurities" at this point in the interaction, but it was because he was upset.

Attempts to Contact Civilians

On June 28, 2011, the undersigned investigator conducted a canvass of the vicinity of Van Duzer Street and Sands Street in Staten Island. None of the houses in the area matched the description provided by Mr. B [REDACTED] so the investigator approached all of the houses with gates in front of them, as Mr. B [REDACTED] said that the house had a gate. No one recalled the incident and please call letters were left both with individuals in person and at the relevant homes.

NYPD Statements:

Subject Officer: PO CHRISTOPHER HEBERT

- PO Hebert is a [REDACTED] eyes and brown hair.
- On April 29, 2011, he worked from 5:00 a.m. to 1:35 p.m. on a SNEU assignment with PO P [REDACTED]. The officers were dressed in plain clothes and were assigned to an unmarked Impala, vehicle number 386.

Memo Book:

PO Hebert did not have any memo book entries regarding this incident (*encl. 10a – 10b*).

Summons:

PO Hebert issued Mr. B [REDACTED] summons 43312733-3 (*encl. 10c*) for disorderly conduct, subsection two. On the back of the summons, PO Hebert wrote, “Def. was blocking vehicular traffic while standing purposely in the middle of street. Deft. was yelling and screaming/cursing causing public alarm.”

CCRB Testimony:

PO Christopher Hebert was interviewed at the CCRB on July 21, 2011 (*encl. 10d – 10f*).

At approximately 7:00 a.m., PO Hebert, who was driving his vehicle on Bay Street, facing Sands Street, saw a black male, later identified as Mr. D [REDACTED] B [REDACTED] walking on Sands Street, near Bay Street. PO Hebert drove around one short block and parked with his vehicle back on Bay street, facing Sands Street and saw Mr. B [REDACTED] in the same spot. PO Hebert saw him approach a driveway that led to three garage doors on Sands Street. Mr. B [REDACTED] pulled on the handle of each of them and kept walking. It looked to PO Hebert as though Mr. B [REDACTED] was trying to open the doors. Both PO Hebert and PO P [REDACTED] made the same observation but it was PO Hebert’s decision to stop Mr. B [REDACTED]. PO Hebert did not have a discussion with PO P [REDACTED] but told him, “[Mr. B [REDACTED] pulled on those doors. Let’s see if he lives there.” PO Hebert observed Mr. B [REDACTED] for approximately ten minutes from the first time he saw Mr. B [REDACTED]. Because burglaries had previously occurred in the area and the number of burglaries in the surrounding blocks had increased, PO Hebert drove closer to Mr. B [REDACTED] with the intent to stop him, to see whether Mr. B [REDACTED] lived at one of the residences or whether he knew someone who lived there. PO Hebert parked his car.

At that point, Mr. B [REDACTED] had already walked onto the sidewalk from the driveway of one of the houses. When PO Hebert exited the vehicle, he asked, “Can you come here for a second?” Mr. B [REDACTED] began walking towards him and into the street. Mr. B [REDACTED] demeanor was very violent and hostile and he walked towards PO Hebert “like he was ready to be in a fight,” saying, “Fuck you. Don’t bother me,” and was moving his hands around by waving them in front of him and around his waistband and back pocket. PO Hebert felt threatened by Mr. B [REDACTED] actions. In

addition, Mr. B [REDACTED] used his hands as he was speaking and his hands were “going behind him.” Since Mr. B [REDACTED] was wearing a backpack, PO Hebert did not know what Mr. B [REDACTED] had on him or in the bag, such as weapons. Based on these motions, PO Hebert believed that he could be “reaching for something or hiding something.”

Because of Mr. B [REDACTED] demeanor and since Mr. B [REDACTED] got very close to him, PO Hebert attempted to place Mr. B [REDACTED] in handcuffs by grabbing his arm. PO Hebert also wanted to handcuff Mr. B [REDACTED] to further investigate the situation by determining whether Mr. B [REDACTED] lived there. When PO Hebert attempted to grab Mr. B [REDACTED] arm, Mr. B [REDACTED] walked past PO Hebert and PO P [REDACTED] a few steps further into the street and attempted to cross. PO P [REDACTED] assisted PO Hebert and they managed to each gain control of one of Mr. B [REDACTED] arms and each put a handcuff on.

PO Hebert and PO P [REDACTED] took Mr. B [REDACTED] to the sidewalk and frisked his waistband, back pockets, and front pockets (and possibly his legs) because those were the areas where Mr. B [REDACTED] had been moving his hands. He did not see any bulges in his pockets and did not feel anything sharp or hard when he frisked him, so he did not remove anything from his pockets. PO Hebert added that due to Mr. B [REDACTED] demeanor and his experience that people can hide weapons, he wanted to make sure that he was safe.

Mr. B [REDACTED] was still wearing the backpack that he had been motioning towards with his hands, and PO Hebert wanted to make sure there were no guns or knives. PO Hebert was asked if Mr. B [REDACTED] had done anything, or if PO Hebert had seen anything, that made him think specifically that Mr. B [REDACTED] had a gun or knife. PO Hebert explained that Mr. B [REDACTED]’s hand movements made him think he might have been reaching for or hiding a weapon.

PO Hebert opened the backpack to look inside, but didn’t remove anything. It’s possible he reached inside to move something. There were mesh see-through side pockets containing miscellaneous items sticking out, such as a screwdriver, pens, and wires. He found no contraband in the bag.

PO Hebert believed that Mr. B [REDACTED] had no identification and explained that he was homeless. PO Hebert asked Mr. B [REDACTED] why he was there, whether he lived there, or if he knew anyone who lived in one of the houses that he checked the garage doors of, and Mr. B [REDACTED] didn’t answer his questions, instead saying phrases such as, “Stop harassing me,” “Fuck you,” and, “You’re only stopping me because I’m black.”

PO Hebert eventually issued Mr. B [REDACTED] a summons for disorderly conduct. Although there were no civilians around, he was causing public alarm by yelling, standing in the middle of the street, and being violent and disorderly. PO Hebert issued Mr. B [REDACTED] a summons, and let him go. Since PO Hebert wrote a summons for Mr. B [REDACTED] he believes that he did eventually provide identification. PO Hebert did not curse at Mr. B [REDACTED] or call him a degenerate at any point during the interaction.

Once Mr. B [REDACTED] was issued the summons, PO Hebert removed the handcuffs. Mr. B [REDACTED] was still very angry and hostile towards the officers, cursing at them and telling them that he had just gotten out of jail, so he knew the system. Besides assisting PO Hebert in handcuffing Mr. B [REDACTED] PO P [REDACTED] did not make physical contact with him. PO Hebert could not determine whether Mr.

B[REDACTED] was intoxicated during the interaction and he did not recall whether there was any discussion regarding Mr. B[REDACTED] drinking alcohol.

Subject Officer: PO M [REDACTED] P [REDACTED]

- *PO P [REDACTED] is a [REDACTED]*
- *On April 29, 2011, PO P [REDACTED] worked from 5:00 a.m. to 1:35 p.m. on a SNEU assignment with PO Hebert. The officers were dressed in plain clothes and assigned to an unmarked grey Chevrolet Impala, vehicle number 386. PO P [REDACTED] was the recorder.*

Memo Book:

PO P [REDACTED] did not have any memo book entries regarding the incident (*encl. 11a – 11b*).

CCRB Testimony:

PO P [REDACTED] was interviewed at the CCRB on August 4, 2011 (*encl. 11c-11d*).

At approximately 7:00 a.m., PO P█████ and PO Hebert, while in their unmarked vehicle at the intersection of Bay Street and Sands Street in Staten Island, observed a male walking very slowly in the middle of Sands Street, away from Bay Street and towards Van Duzer Street. The way the individual was walking aimlessly, not seeming to have any purpose or going anywhere in particular, led PO P█████ to believe that he may have been lost or under the influence of drugs. They observed him for 2-3 minutes. The officers viewed this individual, identified as D█████ B█████ from approximately half a block away, an estimated 100 feet. Mr. B█████ walked up to an overhead garage door and attempted to open it by pulling on the handle but it was locked. PO P█████ did not recall which side of the street the house was on. When he realized that it was locked, he attempted to open the side door to another house and then subsequently a third door. Later in the interview, PO P█████ clarified that he did not recall the order in which Mr. B█████ attempted to open the doors.

PO Hebert and PO P [REDACTED] drove up to Mr. B [REDACTED] and PO Hebert identified himself as an officer. PO Hebert asked Mr. B [REDACTED] for identification. Mr. B [REDACTED] refused to provide any identification and then became combative, telling the officers to “fuck off” and calling them racist. He also stated that they were harassing him, as he was minding his own business and the officers had no reason to stop him. PO Hebert and PO P [REDACTED] exited their vehicle and PO Hebert asked Mr. B [REDACTED] for identification a second time. At this point, Mr. B [REDACTED] was in the middle of the street, but the interaction then moved to the sidewalk. PO Hebert asked again for ID. Mr. B [REDACTED] eventually complied and handed over his identification. PO P [REDACTED] did not recall how many times PO Hebert requested Mr. B [REDACTED] identification, but believes that he made the request two to three times. When Mr. B [REDACTED] was refusing to cooperate, PO Hebert told Mr. B [REDACTED] that he could be arrested instead of being issued a summons for refusing to comply. PO P [REDACTED] noted that Mr. B [REDACTED] was acting disorderly for the duration of the incident, so he could have been arrested at any time.

According to Mr. B█████ identification, he did not live anywhere in the area (PO P█████ did not recall the address), so the officers wanted to find out why he was there. PO Hebert asked Mr. B█████ what he was doing in the area, where was he coming from, where was he going and why he was pulling on the door. Mr. B█████ refused to answer any of the officer's questions. Mr. B█████ began waving his arms in a threatening manner by extending his arms out towards the officers in a pushing motion whenever they got close. PO P█████ did not recall how many times

Mr. B [REDACTED] made the pushing motion, but knew it was more than once. Mr. B [REDACTED] never made any physical contact with the officers. PO P [REDACTED] noted that Mr. B [REDACTED] “caused a big scene” attempting to get people out of their houses, saying, “Look what these cops are doing!” No civilians exited their homes at any point during the interaction.

PO P [REDACTED] feared for their safety because Mr. B [REDACTED] was threatening, combative, and uncooperative, though PO P [REDACTED] noted that nothing about Mr. B [REDACTED] physical appearance led him to believe that he was armed. PO P [REDACTED] did not recall what Mr. B [REDACTED] was wearing. When PO Hebert attempted to frisk Mr. B [REDACTED] he pulled back, so PO Hebert grabbed one of his hands, PO P [REDACTED] grabbed his other hand, and they handcuffed Mr. B [REDACTED] PO Hebert then frisked Mr. B [REDACTED] “from head to toe” to make sure he did not have any weapons, but he did not enter any of Mr. B [REDACTED] pockets.

Mr. B [REDACTED] had a backpack, though PO P [REDACTED] did not recall whether he was wearing it or had it in his hands. He noted that the bag was put down to the ground by Mr. B [REDACTED] at some point before he was handcuffed, but he did not remember whether it was voluntary or under his or his partner’s instruction. In addition, PO P [REDACTED] believed that the bag may have been partially open. PO P [REDACTED] could not be sure if the bag was frisked and denied doing that himself because he was “mostly watching the suspect.” They might have patted the backpack from the outside. PO P [REDACTED] noted with prompting from his PBA representative, Janet Insardi, that there could have been burglary tools within the bag.

The officers never found out why Mr. B [REDACTED] was in the area because he refused to provide them with any information. PO Hebert returned to the car and PO P [REDACTED] remained with Mr. B [REDACTED] In the car, PO Hebert wrote Mr. B [REDACTED] a summons for disorderly conduct because Mr. B [REDACTED] was being loud and causing a public disturbance. PO P [REDACTED] noted that there were no civilians in the area and he did not recall whether there was any traffic going down the street or whether Mr. B [REDACTED] ever impeded traffic, but it was early in the morning and he did not believe there was traffic. PO P [REDACTED] did not recall any discussion with Mr. B [REDACTED] regarding whether he had been drinking before the incident. PO Hebert never cursed at Mr. B [REDACTED] and did not call him a “degenerate” or “stupid.”

Summons for Incident and Disposition

- Summons number 433112733-3 was voided, as PO Hebert did not turn in the summons to the precinct in time.

Status of Civil Proceedings

- D [REDACTED] B [REDACTED] has not filed a Notice of Claim with the City of New York as of July 21, 2011 with regard to the incident.

Civilian Criminal History

- As of April 30, 2012, Office of Court Administration records reveal the following criminal convictions for D [REDACTED] B [REDACTED] (*encl. 12a – 12t*).

- [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
resentenced to imprisonment for one year.

○ [REDACTED]

Civilian CCRB History

- This is the first CCRB complaint filed by D [REDACTED] E [REDACTED] (*encl. 6a*).

Subject Officer CCRB History

- PO Christopher Hebert has been a member of the service for four years and there are no substantiated CCRB allegations against him. (*encl. 5a*).

Conclusion

Identification of Subject Officers

- The officers were consistent that PO Hebert initiated the stop; therefore **Allegation A** is being pleaded against PO Hebert.
- Mr. B [REDACTED] alleged that PO Hebert frisked him, searched him, and called him a “degenerate.” PO Hebert confirmed that he was the officer who primarily made physical contact with Mr. B [REDACTED] so **Allegations B, C, and E** are being pleaded against him.
- Although Mr. B [REDACTED] alleged that PO P [REDACTED] entered his backpack, PO P [REDACTED] and PO Hebert were consistent that PO P [REDACTED] did not inspect the backpack, so **Allegation D** is being pleaded against PO Hebert.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Christopher Hebert stopped D [REDACTED] B [REDACTED]

PO Hebert and PO P [REDACTED] were consistent with each other, testifying that they both saw Mr. B [REDACTED] attempt to open several garage/side doors. Although Mr. B [REDACTED] never stated that he attempted to pull open any doors, he testified that he had stopped for a minute because he was tired and disoriented and then entered a driveway of a residence of which he did not reside. Mr. B [REDACTED] further stated that the officers made statements to him about break-ins in the area, which adds credibility to the officers’ statements. Thus, the investigation credits the officers’ testimony that Mr. B [REDACTED] was attempting to pull open the garage doors. According to *People v. De Bour*, 40 N.Y.2d 210 (1976) (*encl. 4a-4m*), an officer can forcibly stop any individual who they reasonably suspect is committing, has committed, or about to commit a felony or penal law misdemeanor. Based on the officers’ testimony, seeing Mr. B [REDACTED] attempt to open several different garage doors and then walking away when he could not open them caused them to suspect that he did not live at these residences and therefore was attempting to illegally gain entry, which would justify them stopping him to investigate whether he had reason to attempt to open the doors. It is therefore recommended that **Allegation A** be closed as **exonerated**.

Allegation B – Abuse of Authority: PO Christopher Hebert frisked D [REDACTED] E [REDACTED]

Allegation C – Abuse of Authority: PO Christopher Hebert searched D [REDACTED] B [REDACTED]

Although it is undisputed that PO Hebert and PO P [REDACTED] stopped Mr. B [REDACTED] during which PO Hebert frisked him. However, there is conflicting testimony as to Mr. B [REDACTED] actions prior to the frisk and whether PO Hebert searched Mr. B [REDACTED] pockets. Both PO Hebert and PO P [REDACTED] stated that Mr. B [REDACTED] was acting disorderly, cursing and yelling at the officers from the beginning of the interaction and moving his hands in an aggressive manner. Because of these actions, the officers feared for their safety, so they handcuffed Mr. B [REDACTED] and PO Hebert frisked him, without ever entering his pockets. The officers were inconsistent in that PO Hebert stated that Mr.

B■■■■ was making various hand movements around his waistband and around his back pocket, whereas PO P■■■■ stated that Mr. B■■■■ was making an aggressive pushing motion towards the officers. Mr. B■■■■ was admittedly sarcastic, questioned the officers' actions, accused them of racial profiling and brushed PO Hebert's hand away from him but did not testify to the alleged furtive movements. PO Hebert told him to be quiet and that he was disturbing people, corroborated by Mr. B■■■■ and attesting to Mr. B■■■■ loud and boisterous behavior.

If the officers' testimony were to be taken on its face, then PO Hebert would have had justification to frisk Mr. B■■■■ waistband and back pockets as those were the areas where he had his hands. However, without any evidence or independent witnesses, the investigation was unable to determine whether Mr. B■■■■ recount of the incident or the officers' version is more accurate. Without this, it is not possible to determine whether PO Hebert was justified in frisking Mr. B■■■■.

Although Mr. B■■■■ alleged that he was searched by PO Hebert, the officers denied that Mr. B■■■■ was searched. Without further evidence or independent witness testimony, the investigation was unable to determine with a preponderance of the evidence whether or not the search occurred. Therefore, it is recommended that **Allegations B and C** be closed as **unsubstantiated**.

Allegation D – Abuse of Authority: PO Christopher Hebert searched D■■■■ B■■■■ backpack.

Mr. B■■■■ provided inconsistent and limited information regarding the allegation that his backpack was searched. He did not mention the allegation during his initial complaint and then alleged that it was PO P■■■■ who conducted the search before changing his statement to say that it was PO Hebert who searched it. While PO Hebert said that he opened the bag while Mr. B■■■■ was still wearing it, Mr. B■■■■ did not describe such an action and PO P■■■■ stated that he believed that the bag was already open. PO Hebert also mentioned that a screwdriver was in plain view and in an outside pocket. No one corroborated this.

By the standards of *People v. De Bour*, 40 N.Y.2d 210 (1976) (*encl. 4a-4m*), the maximum level of intrusion allowed during a street encounter under reasonable suspicion is a frisk of the civilian's outer clothing for weapons. More intrusive actions, such as searching pockets, inside closed containers, and other personal property, are considered searches and requires probable cause. Certain extenuating circumstances allow the search of a civilian's personal property during a lawful stop. According to *People v. Moore*, 32 N.Y.2d 67 (1973) (*encl. 3a-3g*), "It follows that where reliable information or facts available to the police officer link the individual to a weapon, the belief of danger to himself and others is real and reasonable and an immediate search is justified."

If PO Hebert's testimony was taken on its face and the backpack was still on Mr. B■■■■ person at the time and with a screwdriver in reach, PO Hebert could have frisked the backpack as he frisked Mr. B■■■■ person and then enter the bag if he felt anything that could have been a weapon. However, the investigation was unable to come to a determination of fact regarding whether and to what extent PO Hebert investigated the contents of Mr. B■■■■ backpack. Therefore, it is recommended that **Allegation D** be closed as **unsubstantiated**.

Allegation E – Discourtesy: PO Christopher Hebert spoke rudely and obscenely to D ■■■■■ B ■■■■■

Mr. B ■■■■■ alleged that PO Hebert called him a “degenerate.” PO Hebert denied calling Mr. B ■■■■■ a degenerate, which PO P ■■■■■ corroborated. Because of the absence of any independent witness testimony, the investigation was unable to confirm or refute Mr. B ■■■■■ allegation. Therefore, it is recommended that **Allegation E** be closed at **unsubstantiated**.

Allegation F – Other Misconduct: PO Christopher Hebert failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Allegation G – Other Misconduct: PO M ■■■■■ P ■■■■■ failed to prepare a memo book entry as required by Patrol Guide Procedure 212-08.

Since PO Hebert and PO P ■■■■■ stopped Mr. B ■■■■■ they should have prepared memo book entries to document their actions. According to *NYPD Patrol Guide* Section 212-08 (*incl. 2a-2c*), officers are instructed to accurately record “information pertinent to an assignment or observed/suspected violation of law, i.e., action taken, narrative disposition, forms prepared.” However, neither PO Hebert nor PO P ■■■■■ made any notation in their memo books pertaining to their interaction with Mr. B ■■■■■ it is therefore recommended that PO Hebert and PO P ■■■■■ be cited for **Other Misconduct**.

Team: _____1_____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date